

**MINUTES FOR THE  
MEETING OF THE  
BOARD OF LAND AND NATURAL RESOURCES**

DATE: THURSDAY, MARCH 11, 2010  
TIME: 9:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HI 96813

Chairperson Laura Thielen called the meeting of the Board of Land and Natural Resources to order at 9:02 a.m. The following were in attendance:

**MEMBERS**

Laura Thielen  
David Goode  
Jerry Edlao  
Rob Pacheco

Ron Agor  
John Morgan  
Dr. Sam Gon

**STAFF**

Morris Atta/LAND  
Sam Lemmo/OCCL  
Barry Cheung/LAND  
Dan Quinn/PARKS  
Jap Eijzenga/DOFAW

Kevin Yim/DOBOR  
Paul Conry/DOFAW  
Dan Polhemus/DAR  
Jason Misaki/DOFAW

**OTHERS**

Pam Matsukawa, Deputy AG  
Ranker Pang, D-3  
Harry Yada, K-1  
Justin Hughes, K-3  
David Andrew, K-3  
Doug McClafin, C-9  
Eric Leong, M-1  
David Cowan, C-8  
Lee Sichter, K-2  
Ross Brown, F-8  
William Aila, F-7  
Marti Townsend, F-7  
Ray Moore, F-7

Bill Wynhoff, Deputy AG  
Pam Macer, J-4  
Lorna Nishimitsu, K-3  
Michele Hughes, K-3  
Sandi Strong, K-3  
George Kimura, D-5  
Gary Morikawa, D-14  
Lea Hong, C-6  
Jerry Gibson, D-15  
Charles Littnan, F-7  
Trisha Watson, F-7  
Keiko Bonk, F-7  
Douglas Ing, D-7

{Note: language for deletion is [bracketed], new/added is underlined}

**Item A-1      January 8, 2010 Minutes**

**Approved as submitted (Agor, Gon)**

**Item A-2      February 11, 2010 Minutes**

Member Pacheco recused himself.

**Approved as submitted (Gon, Morgan)**

**Item D-3      After-the-Fact Issuance of a Revocable Permit to Kapaa Poi Factory, Inc. for the Operation of a Poi Factory and Processing Facilities for Other Agricultural Products, Waipouli, Kawaihau, Kauai, Tax Map Key: (4) 4-4-04: 43.**

Morris Atta, Land Division Administrator conveyed that the Kapaa Poi Factory lease has expired and requested an extension, but one was not available. The tenant is experiencing financial difficulties and is finding ways to obtain a low rent to sustain their operations. Staff is in discussions with DOA (Department of Agriculture) to transfer this lease to DOA because DOA can issue lower rates where Land Division is not allowed to. Staff came up with an interim measure to keep the Kapaa Poi Factory on the property with a new rent schedule which is close to what the tenant can afford for the short term to continue which is why staff is going with a revocable permit until staff can transfer this to DOA to assist this operation.

The Board questioned whether there is any action that could accelerate the transfer to DOA. Mr. Atta explained any delay is DOA's review process and willingness to accept the property. Staff normally would require a business plan presented to the Board, but because the Poi Factory is an on-going ag related concern DOA expressed an interest in accepting them which still has to go through the review process reiterating staff's RP. Chair Thielen noted that the Kapaa Poi Factory would need a lease or RP to transfer to DOA and this action helps.

It was questioned by the Board regarding reducing the rent amount. Where Mr. Atta described that it was assumed the owners lived on the property which resulted in the \$2300, but that assumption was wrong and staff had an in-house appraiser re-calculate fair market rental based on the warehouse storage use of that structure that came close to \$1300 which was close to what the tenant desired of \$1200. Staff did all they could to keep the property at fair market value and still keep the operation going.

One of the Board members asked how much time is needed for the transfer. Mr. Atta's response was it depends on DOA, but with the RP it's flexible. The RP is good for a year and would have to come back to the Board for the review process.

Parker Pang representing Kapaa Poi Factory expressed his thanks stressing that Kapaa Poi Factory is an old family business that they don't import outside of Hawaii and deal primarily with local farmers and companies. Mr. Pang related this action allows them to stay in business rather to grow - the problems on Kauai with taro disease and floods that affects their business. They are an ag business that serves and contributes to the community doing tours for children, the community college and Kamehameha Schools.

A Board member asked what is the bottom line lease rent that would make Kapaa Poi Factory more viable. Mr. Pang said that the \$1200 figure is a sustainable figure for them to continue relating equipment problems, space confinement and other issues with the property. Also, external factors like increases to fuel. Mr. Pang related that he, his wife and 76 year old mother in-law still works full time there. Two uncles and Mr. Pang's children come in to help.

Chair Thielen said that in order for Mr. Pang to sustain his business is having a long term lease to work with financial institutions in obtaining loans for equipment and the Board is aware a year-to-year revocable permit is temporary. The transfer time to DOA where they can issue Mr. Pang a long term lease is a concern suggesting to the Board considering amending the submittal to direct the staff to prepare a letter for Board signature to the Chair of the DOA encouraging a prompt transfer and something that they can do a little extra to encourage that to go faster because it would be important for Mr. Pang to have a long term lease.

It was asked by the Board what and how does the water pressure affect their business. Mr. Pang explained that they are at the top of a hill with gravity feed line and they don't have outstanding pressure to feed his boiler in an easy manner and has to save water in containers for their use which causes additional time and effort.

\*Member Agor moved to approve staff's recommendation. Member Edlao seconded it.

Member Agor said he would like to find a way to bring the rent down to \$1200 a month. Chair Thielen asked Mr. Atta that it was her understanding that one of the statutes governing DLNR and leases of property requires by law that they use fair market value for the rent and the motivation for transferring to DOA is under one of the statutes that DOA are not required to follow fair market value for rent and could give a lower rent which Mr. Atta confirmed. The Chair asked given the appraisal done in-house could they re-evaluate the rent internally themselves after that re-evaluation dropped their original estimation from \$2000 plus to \$1300 is it fair market value. Mr. Atta said he is not an appraiser and couldn't speak on this from a technical stand point, but he does know his internal approach is subjective there are margin of error or adjustment that's possible and still meet fair market value. His guess is that they would still be in a reasonable range that they could use and still be within their fiduciary duties. The Chair said that they are still within 1% which is modest.

There was more Board discussion regarding the appraisal amount, the condition of the building discounted. Mr. Atta confirmed that there is subjectivity with the appraisal which the appraiser applied what the industry standards were.

\*Member Agor amended his motion by adding a recommendation 3 for the Board to direct staff to expedite transfer of the land to DOA and reduce the rent to \$1200 per month. The Chair suggested re-phrasing that the Board will send a letter to DOA asking them to expedite the transfer and reducing the rent to \$1200 per month under the RP. Member Edlao who seconded agreed.

**The Board:**

**APPROVED AS AMENDED.** After discussion regarding the subjective nature of appraisal valuation determinations, the Land Board amended this item by decreasing the monthly rental amount from \$1,353 to \$1,200 and adding another item under Staff Recommendations directing the Board, through its Chair, to prepare a letter to the Department of Agriculture ("DOA") urging the DOA to do everything in its power to expedite the transfer of the subject property from DLNR to DOA. This additional condition was added as an attempt to assist Kapaa Poi Factory's financial difficulties by facilitating its ability to take advantage of more favorable rents that may be allowable under DOA management. Otherwise, the Land Board approved staff's recommendations as submitted.

**KDLO:** Please prepare the letter to DOA for Chairperson's signature ASAP!

**Unanimously approved as amended (Agor, Edlao)**

**Item J-4      Consent to Sublease for Harbor Lease No. H-83-2, Kona Marine Holdings, LLC, a Delaware Limited Liability Company, Lessee, Honokohau Small Boat Harbor, Kealahou, North Kona, Island of Hawaii, Tax Map Key (3) 7-4-008-040.**

Kevin Yim, Staff Officer for Division of Boating and Ocean Recreation (DOBOR) reported that this was a consent to sublease to Kona Retail Ventures, LLC who are asking to serve beer and wine at this site and staff recommends consent to the sublease with this entity and approve the sale of beer and wine.

Pam Macer representing Kona Retail Ventures was here for questions.

**Unanimously approved as submitted (Pacheco, Edlao)**

**Item K-1      Conservation District Use Application (CDUA) HA-3532  
Consolidation and Subdivision of Land by the University of Hawaii at  
Hilo for the Kalakaua Marine Education Center Located at Puako,  
Lalamilo, Island of Hawaii, TMKs: (3) 6-6-002:031 and (3) 6-9-  
001:001**

Sam Lemmo representing Office of Conservation and Coastal Lands (OCCL) communicated that the purpose of the action is to establish the parcel for future development of a Marine Education Center by UH. He asked for the Board's consideration and approval of the staff's report subject to conditions.

Harry Yada representing UH-Hilo was here for any questions.

**Unanimously approved as submitted (Pacheco, Gon)**

**Item K-3      Enforcement Case KA-08-06 Regarding Alleged Unauthorized  
Landscaping (Trail Construction) by Justin and Michele Hughes,  
a.k.a. Secret Beach Properties, at Kauapea, Hanalei District, Kauai,  
TMK (4) 5-2-005:036**

Folders with written testimony were distributed to each of the Board members.

Mr. Lemmo reported that this was an enforcement action regarding the alleged unauthorized construction of an access trail through the conservation district at Secret Beach on Island of Kauai. Staff is recommending a fine of \$7500 for the unauthorized trail construction, the administrative fine of \$1500 which is slightly less than that and asking that the owners file either an after-the-fact permit (CDUP) to legitimize the trail or remediate the area with the understanding that if the owners were to go through the permit process it doesn't automatically approve the trail.

The Board asked whether \$7500 is the minimum fine where Mr. Lemmo confirmed it is.

It was asked by the Board whether the entire property is under conservation. Mr. Lemmo said that most is that a small portion is not. A Board member asked whether the adjoining property is in the conservation district and it is not per Mr. Lemmo who said it's in an ag sub-division. The property goes down to the public beach.

Member Agor commented that there will be a fine to the landowners and the amount will be determined by the landowners' explanation.

Lorna Nishimitsu representing Secret Beach Properties and she introduced members Justin and Michelle Hughes who are present. Inside the distributed folder was a colored map where she described the long yellow portion as Secret Beach Properties. The first rectangle blue parcel was where the first report of tree cutting occurred on her clients' property, DOCARE and OCCL conducted an investigation and found that the Hughes were not responsible for the tree cutting, but was by the owners of the blue rectangular

parcel commissioned the cutting, allowed the trees to fall down the slope which could go down to the public beach. The Hughes was concerned that someone on the beach might be injured or killed by these trees. The clean-up is being done at the expense of the people who engaged in the tree cutting with the Hughes watching. There is no reason for the Hughes to cut trees because they don't have any views that need to be enhanced that way because they own close to the public beach. The bluff lots above would benefit. There was a discovery of other tree trunks that were cut further down the Hughes property fronting the bluff lots. Ms. Nishimitsu described old hippy trails from the 1960s or 1970s which led to platforms and picnic tables and not all trails allowed workers to access the valley area to get to the tree trunks. The old steps were fixed and hog wire fencing were put in to prevent workers from falling off precipice areas and without making the trails safe the clean-up would not be possible where DLNR said it should be done. This trail opening prompted the complaint bringing it before the Board which stopped all work. Just before that more dead fall were discovered on the Kapaa side of the conservation area. The Hughes created a horizontal trail to see what was there. Ms. Nishimitsu agreed that they should had contacted DLNR to report that people are cutting trees on their property, but if the Hughes couldn't go in there without the trail the DOCARE officers wouldn't be able to get there and it was discovered more trees were cut along the pink and other blue property are. She doesn't think there was any disingenuous behavior on the part of her clients to violate rules, there was concern for their exposure that the fine of \$7500 is excessive, and they understand staff spent a lot of time investigating resulting in the administrative fees. The Hughes wanted to continue the clean-up work to protect them and the State from any injuries and welcome DOCARE's involvement. Also, they asked for four months rather than 60 days to submit an application because of the mapping of the trails on a 24 acre parcel.

Chair Thielen summarized that Ms. Nishimitsu wants four months instead of the 60 days to submit the application, permit continued clean-up, the fines were high -- what does she recommend. Ms. Nishimitsu said the Hughes agreed to pay the administrative cost, but whether or not they should be penalized for protecting themselves without having to involving DLNR is up to the Board.

The Board had questions about what happens to the trees and if the railings pre-existed. Ms. Nishimitsu said that the trees are hauled out and grinded up and confirmed some of the wooden railings are old.

The Board asked how long the Hughes had the property and whether the lateral trail Ms. Nishimitsu described is in the submittal. Ms. Nishimitsu replied 5 years and that the lateral trail is perpendicular to the beach. The Board referred to photo #9 asking whether it is part of that lateral trail. Justin Hughes (landowner) confirmed that it was to reach the property closest to the blue property by the light house.

A Board member asked whether all the work was done under contract under contract with the Hughes where Ms. Nishimitsu and Mr. Hughes said the trail is by them, but the clean up is with the owner of the rectangular shaped blue property. This Board member asked

whether it is a requirement of all contractors to obtain all permits. Mr. Hughes said he didn't know.

Our Kauai Board member asked what the process was to get the logs out. Ms. Nishimitsu described cutting up the logs to smaller pieces and were hauled up and some left in the valley. Mr. Hughes reiterated Ms. Nishimitsu's previous testimony on lot 29 cutting the trees, staff telling them to remove the fallen trees, the trail, precipice, that all the pictures in the submittal of cut trees were done by someone else and the trail was put in to take down a dead tree for the safety of the workers, trespassers and beach goers otherwise there was no access.

It was questioned by the Board whether they intend to remediate or get a permit. Ms. Nishimitsu's response was a permit. Then the Board asked what is the future use of the trail where Ms. Nishimitsu said to ensure there are no future cutting of trees on their own property because there is no way the owners could walk across this property without the trails. One Board member asked whether that trail goes to the beach and Ms. Nishimitsu said it does not. It connects to other trails and those trails begin at other people's properties.

Michelle Hughes testified that they've owned property in the area for 30 years confirming that this property was purchased 5 years ago noting that there is a history of problems with the beach which she related and they always allowed state and county workers to come through their property to access and they were part of the solution for these violations. They control access to the beach and there may be some ill will by the owners on the bluff. She related two sets of stairs - one nearest the lighthouse was permitted in 2000 by another owner and the second set accessed in the middle of the property is used by 6 or 7 homeowners and those two trails go to the beach. Ms. Hughes reiterated previous testimony regarding finding more violations further east. They determined they saw these old trails and their grounds person opened them up to see what was happening. Their interest is the same as DLNR's, not wanting those trees falling to the beach and hurt someone. They want to remediate this and Ms. Hughes apologized because they thought they were within the confines of the law by opening up old trails. They also discovered that other property owners opened up the Hughes' property for their own use having discovered sod, irrigation, rock walls, etc. Until the Hughes could get there they wouldn't be able to tell those land owners to cease and desist to stop them from using their property as theirs. There has been a history of trespassing and they would like to control that better and to do so they need to be on these trails. They want to do the right thing.

David Andrew representing Sandi and Bill Strong testified referring to the staff's submittal Exhibit 1 that the Strong's property is the "L" shaped piece at the far east of the Hughes' property. The right thing to do is to take this trail out and remediate. Mr. Andrew reiterated previous testimony that the Hughes had the rules in 2007 that putting the trail in was a clear, known violation. The fines are not sufficient because the Hughes are real estate developers. Permits are cost of doing business. If they get off of paying a fine that is a cost of doing business for multi-million dollar pieces of property to give

them and their buyers above further access. The fine is not going to work that they need to get the trail out and the land back to how it was. Trespassing has increased because we have a trail.

Chair Thielen clarified that for today's purpose is a determination of a violation and a fine and they understand Mr. Andrew's preference is not giving the Hughes the option of putting the trail in which the Board will take into consideration. Mr. Andrew noted with respect to the trail the rules say very clearly trails are not allowed in this limited sub-zone and you can't get an after-the-fact permit without changing the rules.

Sandi Strong said the trail goes to the top end and didn't understand why the trail is where it is.

Member Agor asked whether Mr. Andrew knew that some of the property owners there have been consistently going on the Hughes property and cutting the trees down. Mr. Andrew said he was not aware of that at all unless some allegation has been brought. OCCL determined the Hass cut the trees that are not true because the report says they couldn't determine who cut the trees so there is no further investigation or fine because that couldn't be determined.

A Board member asked whether there is public access or just the immediate resident lots. Ms. Strong said there are no trespassing signs, but they find a lot of people coming up making it more a public trail which it isn't. There is public access at the far end opposite from their property.

\*Member Agor made a motion to accept staff's recommendation amending item 2 by reducing the fine from \$7500 to \$3500 and item 5 allowing 4 months for the submittal of an after-the-fact conservation use permit. Member Morgan seconded it.

Member Agor commented that if the neighbors never cut the trees this wouldn't be an issue that it wouldn't necessitate the Hughes ever going into that part of their property. A fine should be levied because all further cuttings should have been reported to DLNR and the Hughes should've asked what to do next, but instead went ahead and did what they thought was right by cutting the trails to access areas DOCARE didn't see fallen trees.

Member Pacheco said he has experience building trails and this is an extensive trail cut with a lot of labor and expense just to get into an area to clear it out. People who do this kind of work in very steep terrain and he doesn't believe this trail was put in merely to clear the logs out. It's a trail meant to be used long term and the fact that they laid board down to hold the trail back – this is the building of a trail for access not to carry logs up.

Member Gon said he had a similar impression suggesting modifying item 5 by putting the remediation option in instead of the after-the-fact permit. He doesn't like the idea of how much more open this place is to be accessed by people on a dangerous conservation district area and he has a hard time accepting the motion as currently being proposed. His amendment to item 5 is Secret Beach shall remediate the trail and restore the land in



its original state and scratch the application for an after-the-fact CDUP. It's understood the need to monitor, but because of the nature of the trail really open up the property to further activities both within and outside the control of the landowner and adjacent owner which is his concern. He would rather see remediation than establishment of a well built trail that has easy access to the beach.

Member Morgan queried wouldn't the process for getting the permit reveal more information. The Chair said that the owners can always file a permit and we can't ban people from filing an application for a permit, but it doesn't mean they will get it or not. This Board does have authority in response to violations to order remediation which has been done in the past. Giving the example of encroachments on the beach where the Board ordered landowners to remediate by removing the improvements put there in an unauthorized fashion and the person has to do that remediation within a set timetable or be subject to further administrative fines. A year from now, if someone wants to come back to seek a permit for this activity the Board could look at it at that time. They cannot prohibit people from filing applications, but you have the ability to order remediation to remove the improvements.

Member Agor said he withdraws his amendment to item 5. There was some discussion. Chair Thielen clarified the motion was to change to authorize instead of 60 days to do an after-the-fact 4 months and Member Gon is proposing for item 5 the Secret Beach LLC shall remediate the trail and restore the land to its original state. Member Gon said he would like to see this motion go to vote and if not entertain another.

\*Member Gon made a motion to amend item 5 that Secret Beach LLC shall remediate the trail and restore the land to its original state. Remove the clause changing 60 days to 4 months. Stay with the minimum fine. Member Edlao seconded it.

Chair Thielen summarized one preference is to lower the fine, give them more time and the option to do an after-the-fact permit. Also, in discussion that they should not give them an after-the-fact permit and instead to do a remediation.

Member Pacheco asked whether there are property owners who have permits for stairways/trails through the conservation portion of their property in that area. Mr. Lemmo confirmed there is a property next door who had cut a trail illegally, were fined and they came in afterwards and successfully received an after-the-fact permit which happened over 5 years ago to the north of today's property. It happened here and at other places. Member Gon noted that may have been a different matter.

Member Morgan said they should allow the process for the trial and if the Hughes don't get it the only course is remediation. Or, remediate then apply then if you get approved do it again which isn't an efficient use of resources. The Chair acknowledged that they have done that in the past that there is evidence that the owners were aware of the rules because if there was a situation where the Board was looking at a request where there was no trail in place where they wouldn't approve it and authorize it after-the-fact it becomes a motivation for people to go build it without a permit and come in seeking permission

for an after-the-fact permit. They had situation where the Board has ordered remediation and then if people want to come in seeking permission for a trail they are on level with everyone else where it's a no-no, but not wanting to reward unauthorized behavior.

Member Pacheco asked how staff came up with the \$7500 between the cutting of trees and the building of the trail. Mr. Lemmo said this matter is specifically related to the trail because staff couldn't pinpoint who was cutting the trees and felt they couldn't bring that against the Hughes. Since Mr. Hughes admitted to building the trail and that was the issue that could be prosecuted.

Chair Thielen said she is leaning more toward the remediation because there was knowledge of the rules, it's accurate to say there wasn't a finding in the past that the Hughes didn't cut the trees, but there wasn't any finding proof of who cut those trees and the Hughes were notified of it. Given that the Hughes had notification of the rules and tree cutting wasn't ok then we go build an extensive trail to see if there was further cutting as opposed to calling OCCL and saying there is more activity and it wasn't us which the Chair has trouble with. She thinks going with a remediation with a lower fine and kept the option for an after-the-fact, but have a higher fine. Maybe go the route of remediation with a lower fine because you don't want to reward behavior that people were on notice that they shouldn't do. Member Morgan agreed because people could climb all over the place to see what is going on.

Member Gon asked what's missing is the actual trail's path across the property and is there any depiction of that. Mr. Lemmo answered there isn't because it would require a survey which would take more money and effort acknowledging there is information lacking in that regard. Member Gon asked whether it goes across a thousand meters. Member Morgan said he heard one testifier say it's close to the bluff lots.

Chair Thielen summarized that the motion is reducing the fine to \$3,500 allowing either remediation or apply for an after-the-fact permit and to provide 4 months for the applicant to apply for an after-the-fact permit. She asked for the vote. Members Goode, Morgan and Agor were for. The rest of the Board was opposed. The motion failed.

\*Member Pacheco made a motioned to approve staff's recommendation as submitted with an amendment to recommendation #5 changing sixty (60) days to one hundred twenty (120) days. Member Morgan seconded it. Chair Thielen clarified summarizing that the fine will remain and retains the right to either remediate or come for an after-the-fact permit within 120 days or 4 months. She asked for vote. All voted in favor except for Member Agor who was opposed. The motion passes.

Chair Thielen said that the fine will be at the level as recommended and instead of 60 days the applicant has 4 months or remediate. Also, filing for a conservation district use permit does not mean it will be automatically granted and will have to come back before this Board. She also made it known the right to ask for a contested case hearing and if they do want to ask for one they must do an oral motion before the end of today's meeting and file a written petition within 10 days.

**The Board:**

Approved staff's recommendation with the amendment to change recommendation #5 from [sixty (60)] days to one hundred twenty (120) days. It was also noted that filing for an after-the-fact conservation district use permit does not mean it will be automatically granted and will come back before the Board.

**Unanimously approved as amended (Morgan, Agor)**

Chair Thielen stepped out for a call where Member Agor filled in as Chair.

**Item C-9 Request for Approval of Amendment to Habitat Conservation Plan and Incidental Take License, and Accompanying Memorandum of Agreement for Lanai Met Towers**

Paul Conry, Division of Forestry and Wildlife (DOFAW) Administrator communicated that this request will extend the Habitat Conservation Plan (HCP) for two years and is asking the Board to approve a new MOA that staff is working with Lanai Company to implement mitigation measures. A representative is present to answer any questions. The original HCP has been implemented and staff said there hasn't been any recorded incidental takes thus far. The amendment will extend the HCP for a couple years and the plan is to reduce the number of Met towers needed down to only one at this point, but have the option of putting in more. This is an amendment extension that requires a 2/3 vote approval of the Board

Member Gon moved to approve staff's recommendation. Member Morgan seconded it.

**Unanimously approved as submitted (Gon, Morgan)**

Chair Thielen returned.

**Item D-5 Consent to Extension of Lease Term, General Lease No. S-4307, Geo'Co., Inc., Lessee, Waiakea, South Hilo, Hawaii, Tax Map Key:3<sup>rd</sup>/2-2-58:03.**

Mr. Atta conveyed that this is an industrial lease and the Lessee is seeking to replace the roof of the structure to enhance its value and its use life and the cost is \$29,000 and under the existing statute when a Lessee is putting in improvements staff is authorized to issue an extension. The 15 year extension period requested would maximize the lease terms to 55 years. Staff recommends approval to this extension.

A Board member asked whether the standard lease doesn't go up except for every 10 years. Mr. Atta said that is a standard step up provision in terms of the rent re-opening and that can be done to a maximum of 55 years.

George Kimura representing Geo'Co, Inc. asked the Board for the extension to operate his business because of the difficulty of finding industrial space.

Chair Thielen explained staff's recommendation is to do the 15 year extension, but to make sure the improvements are done by a certain time which is by the end of 2010 and if not there will be a cancellation of the extension and she asked is that ok? Mr. Kimura agreed that they will meet the deadline.

**Unanimously approved as submitted (Pacheco, Gon)**

**Item M-1      Issuance of a Revocable Permit to Fourth Mate Productions, Inc. at  
Kalaeloa Barbers Point Harbor, Oahu**

Eric Leong representing Department of Transportation conveyed that this is for storage and construction of a film set on a barge.

**Unanimously approved as submitted (Pacheco, Edlao)**

**Item D-14      Sale of Remnant to HPL CO., LLC, Honolulu, Oahu, Tax Map Key:  
(1) 1-7-032:002 and Portion of Former Waipa Lane.**

Mr. Atta described that this remnant is located at the corner of Liliha and Vineyard which was part of the former Waipa Lane where the owner had concerns that it sits at a busy intersection with a bus stop there and they could control the situation better if they owned the property. Staff's analysis determined that it did meet their statutory definition of a remnant and recommended approving the sale so staff isn't left to deal with those issues and the private owner can.

Gary Morikawa was here to answer any questions where Member Gon asked if he was in agreement with all of staff's recommendations and conditions and Mr. Morikawa was.

Member Morgan moved to approve and Member Gon seconded it.

**Unanimously approved as submitted (Morgan, Gon)**

**Item C-8      Request for Approval of Habitat Conservation Plan, Accompanying  
Incidental Take License, and Implementing Agreement for Kahuku  
Wind Power**

Written testimony was distributed to the Board.

Mr. Conry conveyed that this project is for wind mills at Kahuku which has gone through the HCP development process; it went out for public review where there was one comment from OHA who requested an increase in the amount and lengthening the period of time for mitigation. Those comments were addressed by the agencies; the endangered species recovery committee reviewed the changes and recommended approval of the

HCP and take license. Staff recommends the Board's approval with a 2/3s majority vote; and approval of the implementing agreement subject to the Attorney General's Office review.

David Cowan representing First Wind was here to answer any questions.

Board member Morgan moved to approve which was seconded by Member Gon.

**Unanimously approved as submitted (Morgan, Gon)**

**Item C-6      Review and Approval of Project Recommendations for Funding from the Fiscal Year 2010 Legacy Land Conservation Program (Land Conservation Fund)**

Mr. Conry reported that this item is to get Board approval to go forward with land acquisition projects for the Legacy Land Conservation Program for 2010. This funding is coming from our conveyance tax and geared towards acquisition of important conservation lands for the State of Hawaii. He noted the Board saw the list previously and approved staff to go ahead and pass it to the Legislature for consideration. Staff did meet with the Legislators as part of the consultation process. The Legislators reviewed the list and recommended approval for all of those projects that are ready to be processed. Staff recommends Board approval for all those projects that are ready to go with all the matching money lined up, and to transmit those recommendations to the Governor for approval. The program seems to have the support of the Legislature and Mr. Conry recommended the Board go ahead and authorize those projects that are ready to go to proceed.

Member Agor inquired of item 4 on page 2 of the submittal whether \$800,000 was part of what was required to acquire the property. Mr. Conry confirmed that the \$800,000 will be DLNR's match amount and the County is making sure they have the match amount to complete the purchase. This might be one that may come down to the wire on March 31<sup>st</sup> pending County action. So, if the County agrees to fund it, staff will go forward with the recommendation.

Member Morgan disclosed that he was a voluntary trustee for the Trust for Public Lands and he strongly supports this.

Member Gon said he enjoys seeing these projects when they come forward that these are diverse mix of worthwhile projects in conservation easements on a number of islands. Congratulations and he is happy to support this item.

Member Pacheco said he is pleased to see these and asked about B & C on page 2 whether those projects were removed because of lack of funding or rather if they didn't qualify. Mr. Conry said readiness was an issue, and the commission was paying close attention to and recommending those that were ready to go. These projects can always

come back next year. There was a project last year that was recommended and not funded, but is back on the list to move forward this year.

Chair Thielen noted that this Board should keep in mind that it's not only a question if the project is ready to go and want to dedicate the money to that, but are they also able to have a management plan in place. In the past in the rush to preserve open space people discounted the cost of managing the lands over time and in some cases they haven't put that together. For example, Pupukea/Paumalu was purchased, preserved and dedicated as a State Park Reserve, but there was no Legislative appropriation for any of the cost of managing that area. One of the things they are trying to focus on and get awareness of at the administrative and Legislative level is making sure there is funding to manage these areas, otherwise you are trying to protect something that you may lose out of lack of management after acquiring the property. Make it clear to the applicants to not give up and keep trying, because like Mr. Conry, mentioned one not funded last year is back on the list.

Lea Hong said she stands on her written testimony of support and thanked DOFAW's staff for running a great program.

Member Gon moved to approve as submitted. Member Pacheco seconded it.

**Unanimously approved as submitted (Gon, Pacheco)**

**Item K-2      Request for Public Hearing and Small Business Impact  
Determination: Petition to Amend Title 13, Chapter 5, Hawaii  
Administrative Rules (13-5, HAR) to Redesignate Land that Lies  
Within the Conservation District Limited Subzone into the Resource  
Subzone by Mr. & Mrs. James Case Located at Makiki, Honolulu,  
Island of Oahu, TMK: (1) 2-5-018:021**

Mr. Lemmo communicated that all subzone boundary amendments have to go through the rule amendment process because the subzone are in the rules and this is the first step in the rule amendment process. Staff seeks the Board's approval to hold public hearings on the matter and move the case forward. There is no discussion in the staff report on the merits of the proposal because at this point staff felt it wasn't the right venue to get into a discussion of the merits of the project and to allow the process to move forward. Collect public input, do more analysis, come back to the Board with a recommendation whether or not this rule should be amended or not. Staff seeks the Board's approval of staff's report with conditions.

There was some discussion whether or not there was a conflict for Member Gon because his boss is the daughter of Mr. and Mrs. James Case. There wasn't a conflict because the Deputy Attorney General, Pam Matsukawa asked whether or not the Cases worked at Member Gon's organization and they did not.

Chair Thielen asked whether it is the norm in this area to move from a limited subzone to a resource subzone or is it a patchwork where a number have gone through this process or

is this the first case that this is happening. Mr. Lemmo explained the subzone boundary follows roughly a contour elevation line along Tantalus Drive and on one side this down slope is limited so is the side facing Manoa and the top part is resource where most of the houses are on Tantalus. The Cases want to move the boundary down to a resource subzone and he guessed that would put an existing non-conforming house in the resource subzone which is in the limited subzone and possibly open it up for another residence in the future, but he didn't know if that is a correct statement. The Chair said that she was asking whether there were other situations where that type of changes have been done or if this was a first. Mr. Lemmo said there was an application in the 1990s.

Chair Thielen clarified that this is to approve the processing and the procedures for the request which is to start the public hearing and fact gathering and Mr. Lemmo confirmed that.

There was a question by the Board on whether the new proposed comprehensive rules would handle this item differently where Mr. Lemmo said the new rules would mean different things for the landowner as they currently sit in a limited subzone and if the house is destroyed in a limited subzone where the rule amendment would provide a provision allowing people with residences to rebuild provided they did it within a certain time frame even if its in a limited subzone. This Board member asked whether the process would be the same in the new rules and Mr. Lemmo confirmed that it isn't changing.

It was questioned by a Board member whether there were any fees. Mr. Lemmo confirmed there are, currently a \$100 filing fee and a \$250 public hearing fee where those fees were recommended to be raised in the new rules. Then the Board member asked if these new rules were going to go through before this item where Mr. Lemmo said both will be running simultaneously.

Lee Sichter, representing the Cases was here to answer any questions.

A motion was made by Member Morgan and was seconded by Member Goode.

**Unanimously approved as submitted (Morgan, Goode)**

**Item D-15     Sale of Concession by Sealed Bids for Beach Services at Duke Kahanamoku Beach, Waikiki, Honolulu, Oahu, Tax Map Key: (1) 2-3-037:021.**

Mr. Atta informed the Board that this is the only beach concession that we have in our land management inventory and the current concession is held by the Hilton. Under Chapter 102 staff is authorized to issue this concession by sealed bid and that is what staff intends to do as termination of the existing contract is later this year. In the interim if there is any gap staff is requesting the current concession holder to maintain and sustain the operations under an RP until and if a new concession contractor is finalized.

There was a question by a Board member about people setting up umbrellas and whether this concession authorizes pre-setting of umbrellas. Barry Cheung from Land Division explained that the concession is allowed to rent their equipment. If the customer rents a beach umbrella the concession is required to remove the umbrella after the customer is done using it which is currently being done. Another Board member asked that the concessionaire doesn't have exclusive use of the area and Mr. Cheung confirmed that and the beach umbrellas are not preset. Mr. Atta noted that the area where the concession sits is an exclusive use area. Also, a request for an addition was made to the existing contract to include cleaning of the beach.

Jerry Gibson, Area Vice-President for Hilton Hawaii and the Managing Director for Hilton Hawaiian Village testified on the improvements Hilton has done to the lagoon, Ala Moana Boulevard and the former Dewey Lane. Thanked DLNR and DOT for their cooperation and commitment in improving Waikiki.

It was moved to approve by Member Morgan and seconded by Member Pacheco.

**Unanimously approved as submitted (Morgan, Pacheco)**

**Item F-8      Request for Approval of Special Activity Permit 2010-58 for Mr. Ross M. Brown of Trout Unlimited and Designated Assistants**

Dan Polhemus, Administrator for Division of Aquatic Resources (DAR) communicated that this item will allow the applicant to put up cages in 3 Koke'e streams for the purpose of hatching trout eggs for subsequent stocking into the public fishing area on Kauai. The trout program on Oahu was discontinued due to State cuts and staff has been migrating this to a public/private partnership and this is one element of that working closely with Trout Unlimited who managed to obtain trout eggs from the California Fish and Game and now need to put them somewhere to hatch.

Ross Brown representing Trout Unlimited was here for any questions.

Member Gon asked whether the streams in question were not important for native stream biota. Mr. Polhemus said those streams contain native stream animals however a study was done by a Ron England and co-authored by Mr. Polhemus in 2001 that evaluated the affects of introduced rainbow trout on native stream insects on Hawaii Island and it determined the impact was minimal. The trout either drift feed on terrestrial insects that fall on the stream that was otherwise doomed to drown or they eat predominately introduced cadis fly larvae which is another invasive in the stream. Staff thinks this item activity is properly done.

Member Agor moved to approve as submitted. Member Gon seconded it.

**Unanimously approved as submitted (Agor, Gon)**



**Item F-7      Request for Authorization and Approval to Issue a  
Papahānaumokuākea Marine National Monument Conservation and  
Management Permit to Frank Parrish and Alecia Van Atta, National  
Oceanic and Atmospheric Administration, National Marine Fisheries  
Service, for Access to State Waters to Conduct Shark Monitoring and  
Removal Activities.**

Written testimony was received and distributed.

Mr. Polhemus related that the applicants propose to conduct management activities for the conservation of Hawaiian monk seals including monitoring of shark activities at selected pupping sites at French Frigate Shoals and removal of predatory sharks from these areas. The proposed activities will support the recovery of monk seal populations in the Monument by reducing the likelihood of shark predation on seal pups at French Frigate Shoals. The applicant aim to remove up to 20 sharks per year which will be limited to Galapagos sharks using hand line, hand held harpoon, drum line, live 5 foot bottom set and they may attempt to deploy a net surprise where the net rises under the sharks and entangles them. The science review supports acceptance of this application although there were 7 questions which were answered within the submittal. The cultural review was accepting of the application, but there wasn't complete consensus within the cultural working group. No comments were received from the public on this application. The proposed activities are in compliance with HRS Chapter 343 by exemption class HAR Section 11-200-885 which pertains to experimental management. Staff is of the opinion that this activity should be allowed. The MMB (Monument Management Board) is of the opinion that the applicants have met the findings concurring with the special conditions recommended by staff; however, Office of Hawaiian Affairs recused itself from the MMB opinion because support for the proposed activities was split among the Native Hawaiian community at the time of this submittal and complications between the applicant and Native Hawaiian community is on-going.

Member Gon asked for some clarification on page 5 of the submittal that there was a reference to PEA under #2 where Mr. Polhemus explained PEA is a programmatic environmental assessment. Member Gon referred to the next line regarding "no outstanding impacts if 40 Galapagos sharks were removed" and asked whether this would be every year. Mr. Polhemus explained that Carl Meyer has been doing tagging work at on these sharks at French Frigate Shoals which is a large number that removal was to be no more than 20 per year. He reminded that the Board in 2007 allowed a certain limited take of Galapagos sharks and the sharks proved far more in depth than the researchers and none were taken despite their best efforts. Staff feels that there still is a possibility that the sharks may still elude methods to catch them and if 20 were taken the affect on the overall population of Galapagos sharks in the Monument in general would be negligible given the large size of the population. It was asked by Member Gon whether the 40 was not the same as the 20. Mr. Polhemus said the 40 is if you didn't see any appreciable affect from the removals the first year the agency might come back and propose a removal of an additional 20 the following year which would add up the supporting total, but this permit would authorize only 20 and any subsequent take would

have to come back to the Board. Chair Thielen asked for clarification that this permit would authorize activities for one year up to 20 and if the 20 were not caught in that first year the applicants would still need to come back even to get to that 20 figure. Mr. Polhemus confirmed that and said that permits in the Monument in State marine waters can only be for a single year per the HAR, no multiple year permits.

Member Gon asked whether the PMNM Native Hawaiian Cultural Working Group members have changed where Mr. Polhemus said there has been some turn over, but there has been continuity since this issue was last brought before the Board in 2007 and some of those representatives are here today.

Charles Littnan testified that Frank Parrish from NOAA isn't here and that Dr. Littnan could answer questions. Member Gon asked him whether or not the testing will occur on Oahu for the net surprise. Dr. Littnan confirmed that explaining they are developing a prototype of the net which will be done in March when testing will occur and NOAA is coordinating with the MMB permit coordinators to observe the testing. It's uncertain how affective it will be since it works affectively with seals, but it might be a different matter with sharks.

William Aila, Chair of the Native Hawaiian Working Group testified that they discussed this issue of shark culling for the last 3 years and the group approved the first permit. But, this next go around with the different methods of shark culling the Group could not achieve consensus on this issue and many in the Group are supportive. Mr. Aila said he is not here as part of the Native Hawaiian Working Group, but as an individual who has been involved with Papahānaumokuākea from the beginning and he likes the way the process is in terms of an incremental take along with some analysis that occurs afterwards and moving to the next juncture if necessary. He related the opposition among the Native Hawaiians because of the concept of the shark as an aumakua (family god). This concept is not all sharks, but is a specific shark to your family and in some cases family members has the kuleana (responsibility) to malama (care) the sharks on behalf of a family which is a reciprocal relationship with an individual shark and in turn that shark provides guidance and protection to the family. The Galapagos sharks targeted at the Northwest Hawaiian Islands (NWHI) has a high likelihood of not being someone's aumakua because of the location and the distance from families living there which is Mr. Aila's feelings based on logic. It's important to note that these sharks that are being targeted have not been observed prior to 10 years ago exhibiting this behavior of coming into the shallow waters of the lagoon and preying on juvenile monk seals, that is a learned behavior. Mr. Aila said on a cultural stand point there are many stories and related the story of Naue - half-shark, half-man who learned to eat flesh and later became a man-eater where community came to the consensus that it was ok to go after this shark. There are stories of Hawaiian communities approving the targeting of sharks that exhibit negative behavior which is important the Board knows this. The Native Hawaiian community has done this for generations and is a perfectly appropriate thing to do. In this case what the sharks are feeding on juvenile seals which are important to rebuilding the stocks. We as Native Hawaiians have a responsibility to monk seals because we play a part in their removal in the main Hawaiian Islands. Everyone else in this room has a

responsibility to the protection and mitigation for the recovery for the monk seal population because our ancestors hunted them and are in a dire situation where every single seal counts. The law requires the applicant to take action as well as the culture and the Board requires taking action and hopes the Board supports and approves the permit.

Trisha Watson, representing the Native Hawaiian Working Group testified standing on her written testimony and supports Mr. Aila's testimony. The job of a family who has a shark aumakua is to protect it. If the shark was her aumakua she would be in opposition today. She asked that there be constant communication with the Native Hawaiian community and why she and Mr. Aila is there is because they are taking responsibility culturally that the Board will not stand along in making this decision and their organization has developed a close working relationship with NOAA and individuals involved and will continue going forward. Member Gon appreciated her statements, justifying them by being responsible. Ms. Watson explained this issue first came to them it was a heavy conversation spending hours discussing the cultural and spiritual consequences and as a people they take their culture very seriously.

Marti Townsend representing KAHEA the Hawaiian Environmental Alliance echoed previous testimony to balance the ecosystem that this action is necessary. She noted that this permit is a perfect example of coordination that KAHEA has been advocating for awhile on regulations and wondered why the Federal government will deal in an environmental assessment, but the State did not which would have drawn out some of the concerns. A cultural impact assessment is not meant to be a consensus document, it's a disclosure document. Kudos to the monk seal recovery team for all their effort in reaching out to people. It's unfortunate that this permit becomes an example of where the State could have met its legal obligation to do an EA and if the State doesn't recognize that what other options are there. If the Board is willing to adopt permits without following the environmental requirements of State law then they will go to court – an injunction which has far reaching affects and they don't want to be put in that situation. Why did the State issue an exemption when the Federal government didn't when each has similar exemptions, but Federal did an EA. The State is slapping on an exemption that doesn't have an environmental impact. Also, burying a net in the sand could have environmental and cultural impacts asking the Board to ignore this requirement.

Keiko Bonk with the Marine Biology Conservation Institute (MBCI) testified she supports Charles Littnan and Frank Parrish noting that MBCI has the same concerns presented today. The taking of a species for the survival of another will happen more in the future if we don't start acting appropriately in terms of resource management. She reiterated Mr. Aila's testimony regarding extensive hunting of seals in the past, over fishing issues that altered shark behavior, the hundreds of seals mostly in the NWHI and the population in the Main Hawaiian Islands. People are at the last alternative where in the past we wouldn't. MBCI supports the efforts noting that organizations are doing a Save Our Seal Campaign trying to pass legislation to save our seals in the Main Hawaiian Islands where there is no shark predation. As a conservationist she would never advocate the taking of a species. MBCI's message is in Hawaii we need to be better managers of our resources because we are forced into this situation now and no one feels good about

it. Sharks are taken by the thousands in the longline industry, shark fins for restaurants and NOAA is asking for a small amount to cull the sharks, but moral questions need to be addressed in the broader scale too.

Ray Moore representing U.S. Fish and Wildlife Service testified that after reviewing this item and the dire straits of the monk seals they support this activity.

Member Gon said he has a problem with one sentence recommendations that he doesn't see where the stated conditions are in the item. Mr. Polhemus referred to the 6 items at the bottom of page 6 which are the Special Conditions. The Monument permit General Conditions always apply and they need not state those because they are extensive. If you go to the Staff Opinion and the listed Special Conditions are the listed conditions above and beyond that will prevail in the General listed conditions for any permit you would have in the Monument. If the Board would like these submittals are always evolving and if the recommendation needs to be more amplified or better referenced to where the conditions are staff would be happy to add language to that. The Chair noted that when OCCL has special conditions they do include it in the recommendation to make it easier for the Board where Mr. Polhemus said staff could certainly do that.

One of the Board members asked if there were any comments to KAHEA's testimony on the EA exemption. Mr. Polhemus acknowledged that the aspect of the EA is such that staff felt in this case they had a categorical exemption that applied. Whenever an EA is required staff will do it to comply with the law, but undertaking an EA is an option because they have a categorical exclusion, but they could cooperate with the Federal partners on a joint State/Federal EA which they would have to waive against the current set of resources with the current financial climate, loss of staff and limited number of hours to work in a furlough environment.

Member Gon asked whether the Federal EA process has the cultural impact assessment requirement that the State EA process has. Dr. Littnan said it was done so long ago that he would have to check. Member Gon commented that what Ms. Townsend is saying is that kind of documentation could layout all the concerns and issues with what the Hawaiian cultural perspective would be on the management actions and at the time when the Federal EA was done the co-managers probably didn't anticipate this level of detail and he thought even if a cultural impact assessment was done for the overall management actions that you might some information useful, but the Working Group could put together the same kind of detail in their assessment and if that material is communicated as part of the document, appendix or made available then that could serve a useful purpose. Mr. Polhemus related that staff would like to engage in joint EAs to the extent possible and he thinks it's a good thing to do.

Member Gon acknowledged the Working Group that when these kinds of issues are discussed there is resistance to "put down" the mana'o (opinion) because that is the mana'o of the moment for that situation. People will see it and say this is what the Hawaiian community thinks about this issue now and forever which is hard because you'll find yourself coming to a different conclusion 10 years from now because the

situation is different. It is an on-going issue that he isn't sure how they should resolve, but he likes Mr. Polhemus's suggestion of a joint Federal/State.

Chairperson Thielen spoke to have Dr. Littnan verify some information he gave in the pre-meeting which maybe helpful to the rest of the Board members. If at the end of the year if NOAA were to come back because they had not caught 20 Galapagos sharks seeking to go for the full 40 and she wanted to share this information that made an impression on her. The Monk Seal Recovery Team is making a number of efforts to help preserve monk seals in the population and address the pup decline and this is one of the efforts in removing the predators from this location, but the Team is also taking efforts in other stages of the pups' life to have a higher chance of survival. Dr. Littnan confirmed that explaining that the population decline in the NWHI is driven entirely by low juvenile survival – less than 1 in 5 survives to adulthood. NOAA is developing and implementing some and will be doing more in the future survival ancillary activities for different age classes. For pups, mitigating shark predation by moving animals away from areas where the sharks are after weaning, for slightly older animals moving them to Nihoa where the animals are doing better and older animals doing captive care here on Oahu.

Chair Thielen noted it was important to all the groups involved to recognize that there are multiple activities on-going because of the moral issue raised it take multiple efforts to get the monk seals to a survival stage. Because of the transition that will occur before the applicant comes back she suggested a report be made to the Board which provides the results of the permitted activity as well as the number of sharks caught, the methods used and catch, any observed behavior changes of other sharks and she had a question if sharks are removed from this lagoon are will other sharks come in. Also, a comparison of pups' survival rates and a report back to the Board about the continued consultation with the Native Hawaiian Working Group because a lot of times people don't want to come forward when there isn't consensus because they want to respect the different cultural opinions. There needs to be some security for the Native Hawaiian Working Group because people move or change jobs and the Board can make sure that happens by reporting back to the Board and that consultation continues by bringing it back here. Add this as a condition.

Member Gon moved to amend with the Chair's recommendation. Member Morgan seconded that.

Mr. Polhemus asked whether to report back by the end of the calendar year where the Chair said end of permit period.

**Unanimously approved as amended (Gon, Morgan)**

11:32 AM     RECESS

11:43 AM     RECONVENED

**Item D-7      Re-Submittal Enforcement Action as to Steve's Ag Services, Ltd.,  
Steve Baczkiewicz, Contract Milling, Wesley McGee, and Raymond  
McGee Involving Removal of Koa Timber Resources and Road  
Construction on State Unencumbered Lands, Alika and Papa 1st,  
South Kona, Hawaii, Tax Map Key: (3) 8-8-1:8.**

Member Gon recused from this item.

Mr. Atta briefed the Board that this enforcement action originated in 2003 of the taking of koa timber near Kahuku Ranch on the Big Island resulting in the Board action recommending a fine that there was a recent decision by the Board and that is the action.

Bill Wynhoff, Deputy Attorney General representing the DLNR staff in a previous contested case testified that the history is laid out in the submittal relating that its believed these loggers took logs off of State property, the Board fined the loggers who requested a contested case, the contested case focused on whether the property existed and who owned it. The Board at that time asked them to do a quiet title which Mr. Wynhoff thought was not necessary, but they did get the quiet title action and decision in their favor and now they are back.

Chair Thielen noted that since the time this action occurred the Board has changed and she asked for a presentation with the recommendation.

Mr. Wynhoff displayed a U.S.G.S quadrangle map pointing out where the quadrant in question was relating that the area was part of the Kahuku Ahupua'a which was the largest ahupua'a in the state and an attorney general owned it in the 1850s. These are the ahupua'a Alika Papa 1 & 2. In 1902 the property was surveyed where a mistake was made called a "gap." The surveyors never intended to create a gap, but there were areas overlooked or even overlapped where an area was sold twice. Since then in 1908 this has been the surveyors' view of where the property lines are. This property has a tax map number, but no one has been paying the taxes on the property for decades. In the 1980s, this portion of Kahuku was owned by Damon Estate which was then called Kahuku Ranch who entered into an agreement with the loggers to go into some area of Kahuku Ranch to take dead or distressed koa and the agreement is in the document. The loggers had the map Mr. Wynhoff presented trying to find the area in question, but their efforts failed and instead went makai of the property and cut some trees on Yee Hop's property. They not only cut the dead and distressed koa, but cut down every koa tree and ended with a couple hundred of them and some miscellaneous trees. Many of those trees were cut down to see if they were sound and were left to rot which were several hundred year old koa trees. Going up there it is an untouched forest, but now there are stumps all over the place and there are no big koa trees. The Kipahoihoi NARS is nearby and in the late 1990s the rangers noticed trees were cut and DOCARE investigated. They found out it was the loggers who explained they were going to try to find the boundaries, mitigate cut down the trees and there was some discrepancy as to how many trees were cut down and to determine the number, Michael Constantinides from DOFAW and other staff went in there transected large areas of this property, counting the number of downed trees and

extrapolated the whole property. It was a very thorough study by looking at and counting the stumps on about 20% or more of the property is where staff came up with the numbers. When this was brought to the Board in the first instance, the Governor's statute at the time allowed a fine of \$500 per violation - \$500 per tree, about \$105,000 was assessed plus damages and cost and the Board at that time came up with \$1.5 million and in addition Koa trees are very valuable. There are considerable differences between the values of the tree at the place compared to at the shop which may explain why some of the less sound trees were left to rot on the ground where others were hauled off to a saw mill in the area where loggers can plane them there. One kipuka ends right below the border which makes it difficult for someone standing at the kipuka with this map thinking he may be standing in the middle of the kipuka and that was the loggers' contention that they got confused and they haven't explained why they cut down all of the trees. The loggers requested a contested case, went to contested case hearing, at that hearing the loggers focused on the murky origins of the State ownership of the property. The hearing officer didn't have the authority to quiet title. Mr. Wynhoff and staff's contention was the quiet title action wasn't necessary that you can simply make a determination in the case as to the ownership. If somebody else wants a quiet title action then that can go ahead. About 90 to 95% that the State owns, the State does not have a deed to which fascinated the hearings officer in this case that the fact the State didn't have a deed to this property troubled him despite the fact the State has a deed to hardly any of the property because they own it all. It went to the Board where the hearings office recommended the matter be dismissed without prejudice pending staff taking the matter to court to do a quiet title action on the property which the Board accepted, took the matter to court, went to trial before Sam King. One of the pieces of evidence was a letter from the Survey Office dated 1935 saying that we are confident we own it, etc., etc. The letter was signed by the Territorial Surveyor R.D. King. Judge King says R.D. King was his uncle and Judge King worked in the Territorial Survey Office in the 1930s. Subsequently, Judge King was the Land Court Judge in the State system and was a knowledgeable Judge to be in front of. The loggers appealed that ruling under the Federal system it is so that an appeal from a Federal Court Judge does not affect its finality. Mr. Wynhoff related a different case where his client was sued in Federal court and won then got sued for the same thing in State court where Mr. Wynhoff went there saying you can't sue people twice. Once there is final judgment you're done. Their argument was the Federal appeal isn't done the Federal court judgment was wrong. And, moreover you never had to do this in the first place and you can proceed with or without the judgment. Mr. Wynhoff summarized that the loggers came onto State property without any right to do so whether stated or not. Ultimately, it would be up to someone to decide whether that is a reasonable position. If it was by mistake they cut down hundreds of old growth koa trees - some of which they took and sold, some they left to rot. The way to react to that is up to this Board and staff has made a recommendation.

There was some Board discussion with Mr. Wynhoff on what the loggers' intention was or was it a mistake when they took the koa logs whether it was because no one was around and take it, but they should have known they were on State land. The loggers had permission to log and they knew there was a boundary and they did not have permission to log outside of that boundary including State property and it was the loggers'

responsibility to figure out where the boundary is. Whether or not it is an innocent mistake where there are several levels, one which is go do it thinking you'll get away with it, another is you don't know and is willing to take a change, they think what they did was their best which was good enough for them to do what they did and they might have not known the State property was there at all.

A Board member asked there was record that the loggers tried to ascertain where the boundary was, but didn't seem to go anywhere where Mr. Wynhoff said the loggers tried to explain to the Board 6 or 7 years ago what they had done to try to find the boundary saying they had asked people from the State who said they didn't know, but not exactly. The loggers said they went up there with a GPS and weren't able to come to anything, but the accuracy of GPS has grown exponentially since 2000, but he believes the GPS should have given them accuracy within a hundred meters and this is a thousand feet wide. They indicated talking to a surveyor named Neil Christianson who eventually became their so called expert during the contested case and court case that Mr. Christianson told them that the property hadn't been surveyed that it was the biggest black hole in the whole State which would cost hundreds of thousands of dollars to have it surveyed. Mr. Wynhoff believes from the map presented he didn't think it was possible for experienced people to go up to the property and think you are on the mauka border when you are actually on the makai border because he was up there himself. There is the end of the kipuka and if the end of the kipuka is 50 feet away it's not possible that you're on the mauka border and that is where the logging people would go that the kipuka is the only place they can log because lava fingers don't have any trees.

Member Morgan asked whether there were any cattle in there and if there were any boundary fences for Kahuku Ranch and there were none per Mr. Wynhoff who said there were remnant fences between the makai of Yee Hop and the State property where those were clearly visible. There were no fences between Kahuku Ranch and the State property at that time.

Member Goode asked whether Yee Hop took action against the loggers for logging in their property. Mr. Wynhoff said they did not. When the State first brought the action it was against the loggers and Kahuku Ranch where they blamed each other that Mr. Wynhoff didn't know where that blame lies. There was claim that Kahuku Ranch gave permission to go further makai, Kahuku Ranch denied it, ultimately Kahuku Ranch settled engaging in some restoration activities on the property assisting the State in building an ungulate fence which is on the makai end of the State property between Yee Hop where that fence was partially funded by Kahuku Ranch.

Member Goode was concerned that some good trees were taken that wasn't under contract on State land and he asked if that happened on Yee Hop's property or Kahuku Ranch's land. Mr. Wynhoff said they don't really know for sure and he believes the loggers' position was that the contract with Kahuku Ranch orally amended as such allowing them to take the healthy trees as well, but he couldn't remember that whether it was permitted under existing law and the loggers could address that.



There were more discussions on the gap where Mr. Wynhoff said there wasn't any doubt it was there and the loggers testified they knew it was there, but didn't know where it was claiming that when they were logging through there they thought they were still mauka. When it came to the contested case the loggers focused on the undoubted murky origins, but when the loggers were cutting the trees had no knowledge, as far as Mr. Wynhoff knew that these questions be dealt with in Federal court. A Board member asked whether the loggers didn't doubt the ownership when they were on the ground. Mr. Wynhoff said the loggers had the map, it's on the map, and it's been tax map key – if they doubted the ownership at the time that did not come up in the contested case, but they acknowledged it was there and our DOCARE officers asked at the time.

It was asked by Member Goode whether Kahuku Ranch and Yee Hop were the parties in the quiet title and who was appealing it. Mr. Wynhoff confirmed that they were explaining that Damon Estate subsequently sold Kahuku Ranch to the Nature Conservancy and the United States as part of Volcanoes National Park and it's not that easy to sue the United States because they have sovereign immunity. Under State law you have to sue all of the adjacent owners which were Nature Conservancy, the United States and Yee Hop. You can't sue the United States unless there is a waiver of sovereign immunity. In order to get the sovereign immunity you have to write to them (U.S.) and say do you want to waive your interest in the property. The State wrote to the United States and they did so in State court the State changed their mind, removed the case to Federal court, in Federal court the State took the position that if we own it they'll take it, but they won't expend any effort trying to prove they own it. The loggers although not statutorily necessarily a party to the case were allowed to intervene in the case since they were interested parties in who ends up with the property where the court allowed the loggers to argue that the United States owned it that the boundaries were such that the property is in Kahuku and owned by the United States. Yee Hop took the position that the property was in Alika and Papa and that they owned it. The State took the position that it's in Alika, but was not deeded to Yee Hop's predecessors. Three parties arguing three different possible outcomes and the State's outcome was accepted by the court. The loggers are appealing. United States and Yee Hop did not appeal.

Member Pacheco asked whether the loggers can have another contested case where Mr. Wynhoff acknowledged they could because in the first contested case the hearings officer said "I don't have jurisdiction to do a quiet title and is not going to address title issues." The Board agreed to that where the Board dismissed it in the first case without prejudice and without addressing anything other than determining that it didn't have jurisdiction to weigh into it yet. None of the substantive issues have been decided at the administrative level at all confirming that the loggers have the right to another contested case.

Chair Thielen asked that the original staff submittal recommended \$500 per violation, \$105,500 for damages, plus \$291,000 for damages and cost and \$22,464 for administrative costs and it looks like under the original Land Board action that the Land Board increased the fines substantially on page 7 of the submittal - a monitoring cost of \$3,050 per year for 15 years for a total cost of \$45,750, did additional damage against the loggers of about \$213,000 plus for forgone licensing and authorized of taking referring to

the criminal case that it would be dismissed as mentioned by Mr. Wynhoff that it went to contested case, came back to the Board who waited for the quiet title and now the recommendation is coming back before the Board. The fines are back and she assumed the administrative costs are higher than the original because of the additional administrative costs continuing in this place which Mr. Wynhoff confirmed. The Chair asked if Mr. Wynhoff could explain the recommendation of \$409,000 plus and he said the damages estimate we have in this submittal was based on a study that was done at the time and attached to the original Board submittal in what staff considered to be a conservative estimate of the amount of board feet that was taken that ended up being \$80,122 and based on what the board foot was they tried to base that on indications loggers themselves have written to other people as to what percentage in different quality woods you would find, how much those different qualities would see for and staff got some loggers' invoices and Mr. Wynhoff referred to page 6 relating the percentages and costs.

Chair Thielen asked that Mr. Wynhoff mentioned that the prior Board decision was murky and that he wasn't there. Mr. Wynhoff said the original Board action to assess a fine including damages at \$1.5 million, he did not participate and he spent a lot of time trying to understand how the Board came to that number where the justification for that number did not pop out at him and they resubmitted the numbers today and think the numbers are solid and supportive.

The Chair noted since the original fine of \$500 per tree the statute had been revised since 1993 and asked what is the maximum fine now? Mr. Wynhoff said its \$5,000 for the first violation, \$10,000 for the second and \$20,000 for subsequent violations. And the Chair asked are we using the old amount of \$500 per tree because the activity occurred during that time period which Mr. Wynhoff confirmed. The fines say they are suppose to be civil not criminal. The first announcement would have to be either the fact criminal and if so it can't be retroactive under the clause in the constitution. Second of all, assuming they are civil which he believes they are the question would be did the Legislature intend for them to be retroactive typically while a statute is not retroactive it doesn't seem to be any real justification for arguing that the Legislature intended them to be retroactive and staff discussing whether it would be fairer or appropriate to assess fines under the statute that was in existence at the time although it is considerably less that each of the members of the Board has heard enough violations to have some background as to why the Board increased it back then – a koa tree, depending where it is and how old could be worth \$30,000 to \$40,000 and having a \$500 fine was arguably inadequate, but nevertheless that was what it was and that is why they went that direction.

Chair Thielen said that the testimony the Department submitted to the Legislature supporting the increase of the fine that the \$500 per violation didn't serve as a deterrent and that the violations are much higher now. She asked is there anything in the statute that says the fine can only be levied if there was an intentional violation or is it a strict liability fine. Mr. Wynhoff said there is nothing that requires intentional. Our view is that the fine is no question to accept the 200 violations, the question going back to attention guilty or not guilty.

Member Morgan asked to clarify the \$409,000 whether that was the assessment of the value of the wood where Mr. Wynhoff acknowledged that saying it is a conservative assessment as he saw it. Different numbers could be argued, but they wanted to come to the Board with a number that they felt was solid and conservative. There was more discussion regarding the different grades of wood which could be argued.

It was questioned by Member Agor whether the recommendation to fine each individual logger was a change from the original Board action and it was confirmed by Mr. Wynhoff because it was justified by the facts and that is how the fines work. Each logger violated and each is responsible. There isn't anything in the statute that indicates that they should be assessed jointly, that the fines themselves should only be paid once specifically asking for damages and that is a well accepted provision of law. In two or three years, more people or instances will be responsible for it then you go collect it from each of them. They don't believe it is applicable to fines. It is an effective change since 2003 or it wasn't clear then.

Member Pacheco asked if it was a grading issue would you fine the operator of the grader and everyone working on the site which was confirmed by Mr. Wynhoff that you could and it would be something you could take into account – who seems to be more responsible or you might take into account a particular situation - in this case assessing the fine five different times ending up being \$525,000 and maybe that is something you could take into account for the reasons put forth in their submittal and have argued here today that they feel is the appropriate amount. If the Board feels it should be less that is your prerogative. Member Pacheco said he hasn't seen anything come through before on violations where he gave the example of a previous agenda item where multiple people were working on a trail. Member Morgan said that he recalled this equality loggers had a proprietary interest instead of hiring someone for \$25 per hour. Mr. Wynhoff explained in this case Mr. Baczkiewicz who took the lead role in the testimony as DOCARE indicated that either the revenues or profits were going to be split in a joint venture. He couldn't comment whether this is usual or not that he doesn't doubt that it is usual going this way, but usually people pay the fines – there's a \$500 fine you just pay it and that is the end of it. Mr. Wynhoff suspects the Board is going to find if a fine or damages is ultimately levied after contested case is upheld on appeal to the Circuit Court and appealed to the Supreme Court then there subsequently is going to be a collection action. People don't voluntarily come to pay \$100,000 or \$200,000 and this is not the usual case. He is confident that this is something that can be done with the Board's discretion.

Douglas Ing representing Steve Baczkiewicz, Wesley McGee and Raymond McGee requested a contested case on this matter under HAR § 13-1(29) noting that he participated in the initial contested case proceeding with Bill Wynhoff, but he did not participate in the Federal Court lawsuit which is on appeal.

Chair Thielen asked what exactly is Mr. Ing seeking a contested case of right now because the Board hasn't made a decision. Mr. Ing said the Board submittal where the Chair said the Board hasn't made a decision and the Board submittal is a recommendation. She suggested Mr. Ing speak to the case and recommendation before

the Board on the merits until this Board makes a decision that it is her understanding there is nothing to contest. Mr. Ing agreed saying he did not come prepared to make a case because it would've taken several days and apologized. The Chair said but this was on the Board's agenda in January and he and his clients specifically asked for an extension in order to make this case. Where Mr. Ing said he couldn't appear that day because of a prior commitment. Chair Thielen asked why he wasn't prepared to make his case today on the recommendation and Mr. Ing said he was prepared to argue the facts that occurred during the course of the original contested case proceeding.

Mr. Ing testified that evidence shows that his clients made good faith efforts to locate the boundaries and asked the State surveyor on the island at the time and he couldn't provide his clients with that information. It is true that his clients had the tax key map. The contract between Steve Bacziewicz and Damon Estate who owned Kahuku Ranch provided that the loggers would mark the trees and Damon Estate would tell them whether the tree was in the boundary or not was the agreement and the process that was followed. In terms of whether his clients did it knowingly or recklessly are not the case because they made good faith efforts to stay within the boundary and try to locate the trees that were within Kahuku Ranch's property. They differ on staff's and Mr. Wynhoff's presentation about the intention of the loggers, the number of trees taken, whether they cut down all the trees or not and the value of the board footage.

Chair Thielen said we heard from the other counsel who made an entire presentation to this Board in response to your client's request to have an extension the Board was expecting Mr. Ing to come in with a presentation on this matter to be able to make a case on behalf of your client and to put your case on the record which then could be considered in the event this Board made a decision in any appeal. She asked Mr. Ing whether this is the sum total of the case and the record he is presenting to the Board today. Mr. Ing apologized that he didn't come prepared to do that assuming the Board would support the staff as it has in the past and they would request a contested case proceeding which would take several days of testimony including expert witnesses. He did want to go through that entire process before the Board, but would be requesting a contested case proceeding. The Chair said some minimum presentation to the Board would give the basis for Mr. Ing's recommendation for an alternative decision by this Board and asked whether this was the sum total.

Mr. Ing said it is not the sum total that he had some comments about the application of the law. The statute that authorizes the Board to make fines says \$500 per day of violation not per violation and he thinks that the statute is being misapplied here as was noted in the footnote (page 8). He also argued that the tripling up on the damages assessed value of \$409, 000 based on the board footage and applies it against each individual. Mr. Ing referred to Member Pacheco's earlier comment regarding a previous agenda item where the Board didn't double the damages against the Hughes. Member Agor noted that is not the recommendation. It is only the fine. Mr. Ing apologized that he misunderstood. Mr. Ing said he disagreed with the manner in which Mr. Wynhoff came up with those saying that he got that information from the loggers as to the value of the lumber and that is certainly not the case, but the loggers aren't here today to present

that and would have to wait for a contested proceeding. That was all he had to present to the Board.

Chair Thielen said that Mr. Ing mentioned that the loggers made good faith efforts to locate the trees and the boundaries and asked would he agree with his reading of the statute that the violation doesn't require intent? Mr. Ing said he thinks the way the statute is written says up to \$500, he thinks depending if it was reckless and wanton he would say go to \$500, but certainly with good faith efforts to try to locate the boundary and not poach by taking trees on State land there should be some leeway or flexibility there by taking into account intent and good faith efforts. The Chair agreed to take that into account when measuring the level of the fine, but asked would you agree that the statute would find it to be a violation of the law to cut trees on the property of the State. Mr. Ing said he couldn't agree or disagree with that until he researched it, but he knows you don't have to find criminal intent for example to violate the law. If someone builds a fence on top of State land, encroaches, it is still a violation of the law even if it was done innocently which was handled by the Land Board in the past.

Chair Thielen asked whether Mr. Ing acknowledges that trees were cut on State property by his clients setting aside the issue of intent or good faith or whatever else. Mr. Ing answered he don't and that is why the case is up on appeal. In don't he deferred the whole contested case proceeding they went through in 2004 went to the location of the boundary. Looking at all the Yee Hop deeds, the royal pattens at the time all ran with the Kahuku boundary and was so stated in the deed. There was no intent to leave a gap there. Mr. Wynhoff relies heavily on what's known as evidence in the record as 2468, but if you go through the State surveyor's boundary books of the surveys that were conducted at the time you cannot find a leaps and bounds description of that property. Instead you will find what was determined to belong to Kahuku Ranch as the successor and interest. The certificate of boundary so states that and they had the property all the way to the Kahuku line. The Yee Hop deeds all say they ran the course to the Kahuku boundary where Mr. Ing disagreed strongly whether that was State land even if there were no intent to be on State land.

Chair Thielen said that it sounds like Mr. Ing is still arguing the ownership issue that was already decided by the Federal Court and reiterated her question whether Mr. Ing acknowledges his client cut trees in the location, setting aside the issue of ownership because you're not acknowledging the Federal Court decision, but the location is where your client cut those trees. Mr. Ing said his clients did cut trees at a certain location which they assumed was on the Kahuku Ranch property and was contested by the State and Mr. Wynhoff.

Member Morgan asked referring to the map whether the gap parcel should be on Yee Hop instead of Kahuku if that was the case because it looks like it. Mr. Ing said the makai most boundary line was clearly identified on the surveyors' maps and in the boundary. There was a course and description for the makai most line which would be the mauka most line of the Yee Hop parcel that was defined. The State property occurs mauka of that line which is the so-called gap, but there is no course or distances called

out anywhere in any of the surveyor's books for that line. Instead the line goes further north then west and that is from the surveyor's notes at that time.

Chair Thielen asked that there is an acknowledgement by Mr. Ing that his clients cut trees in this location and also an acknowledgment by him in order to violate the State law does not require intent if there are civil fines which Mr. Ing acknowledged for both questions. The Chair then asked whether Mr. Ing agreed that if this location is State land his clients violated the law by cutting those trees and Mr. Ing acknowledged that. The Chair said at this point what we're discussing is if this is State land, which the Federal Court has found it is; the amount of the fines (Mr. Ing said which is on appeal). That is the scope Mr. Ing would argue on behalf of his clients - what is the amount of fine they should be subject to and Mr. Ing agreed and said for today's purposes. If you look at the statute correctly the fine should be for the number of days they were in violation and the number of trees. Since he cannot present contrary information to the value of the lumber...he will not take a position subject that he doesn't have all the facts to argue and to give it to the Board to decide.

Chair Thielen said she was interested. As far as the value of the wood, that item number 3 (on page 9) the damages of \$409,423 seems acceptable, but Mr. Ing is looking at \$500 per day as opposed to per tree then looking at item number 2 the recommendation is \$105,500 and asked how many days were the loggers up there cutting trees. Mr. Ing said they looked at it in 2004, but apologized that he does not have the figure for her. Where the Chair suggested hypothetically if it were 5 days it would be \$2500 as opposed to \$105,000 which Mr. Ing agreed. And the Chair asked whether the administrative cost of \$53,870 is reasonable. Mr. Ing said he did look at that and there was some cost incurred, but a lot of it had to do with the prior proceeding. The prior proceeding did not go into the merits of the violation and only went into whether or not the State owned the property. Mr. Matsubara's fees were included in that administrative cost. It wasn't the loggers' fault that the State couldn't prove at the time that they owned the land. There was overtime for the State's surveyor to go up to the area to try to survey it and Mr. Ing didn't think that was appropriate. Chair Thielen said he quibbles with some of the administrative costs and Mr. Ing acknowledged that.

Member Pacheco asked whether Mr. Ing's clients left other areas of Kahuku Ranch in the same shape as they left this area with downed trees because if you look at their agreement with the State they are stressing that the loggers were instructed to push piles and clean-up areas which wasn't done in this area. Mr. Ing said he didn't know that he knew that Damon Estate and Kahuku Ranch were part of a violation proceeding. There is a file document on that, but he didn't know the answer to that. But, Mr. Ing wouldn't agree that they left the area in the state indicated in the photographs. He doesn't have the record to where the photographs were taken and he can't tell from the photographs that those were in the area of the State's claimed parcel. Mr. Ing noted that there were other loggers in the area -- Pictures Plus had been in the area previously.

Chair Thielen summarized the fines that were discussed earlier that Mr. Ing agreed to the \$409,000 for damages; quibbled over some of the administrative costs -- maybe \$10,000,

\$15,000 or \$20,000; that he doesn't agree with the \$105,000 and should be whatever for the number of days and asked is he prepared to charge his client his hourly fee and expert witness fees to come in for a 3 day contested case hearing in order to argue over a \$105,000 as opposed to coming prepared to say that you want to work out something with this Board because she was a little confused. We had recent cases where we had damages against people for coral damage and the parties came in saying we recognized that we violated the law, we recognized it was strict liability, although we didn't intend to violate the law there needs to be a consequence for that act and we want to work with you (DLNR) to resolve this matter to make things right in this area. Mr. Ing said that they would need additional time to gather the facts. He knows that the area may have been rehabilitated to some degree, but didn't know to what extent in which it has.

Chair Thielen said that the recommendation before us is for about \$560,000 and you're saying you agree that maybe a \$104,050 is ok looking at two numbers and instead you are saying I want to spend my time billing my clients and hiring expert witnesses and going through contested case proceeding as opposed to sitting down and saying what do we do because Mr. Ing has admitted to the Board today that his clients cut trees in this location which was if it is State property which the Federal Court agrees with us it has is a violation of the law. She asked what is there to go research and contest. Mr. Ing revealed that the loggers have not been able to pay him for the work they did in 2004. He is here on a pro-bono basis because the loggers are broke and can't even pay the \$105,000. The loggers asked him to take this case for them and Mr. Ing felt bad for them because he didn't think the State owned the property in the first place and he didn't want to see them become destitute.

Where Chair Thielen asked why go down a path to continue to increase the administrative and legal costs for everyone under those circumstances. Mr. Ing said that he needed time to sit down with Mr. Wynhoff to try and work it out, but to do that he would need to gather more information and he would very much like to settle. Member Pacheco expressed that was the Board meeting extension in January which he did not support, but everybody else did and Mr. Ing comes here today back to square one and doesn't understand that at all. Mr. Ing is doing this pro-bono and is here representing the loggers, consult them. Where Mr. Ing explained that he thought it would be difficult to present evidence to the entire Board and far easier to create a record especially if it takes a long period of time and he knows the Board is short on time and he apologized for his error. Chair Thielen said if the idea is to create a record to garner sympathy for the loggers it's a matter of reducing a fine that would be a matter that Mr. Ing should sit with the other attorney and work on negotiations and coming forward with a recommendation to this Board, but she is concerned why Mr. Ing is bent on going on a path of further litigation, contested case hearings, arbitrations, hearing officers, going back to court appealing a Federal Court decision and that doesn't seem to jive with the statement that his clients are broke. The Board did give him an extension for his clients to come back to make a presentation and now Mr. Ing is saying give me more time. We gave you time once what is the guarantee if there is some unknown amount of time provided if your clients are actually coming to the table because it seems that instead they are just availing themselves of fields and further delays. Mr. Ing proposed that the Board offer to mediate

this and come back to the Board that he is happy to work with Bill Wynhoff on it. Mr. Ing admitted that he didn't have the time to prepare for this item and he didn't plan to take this case on when it came up. They certainly appreciate the Board's extension, but he couldn't get the case together in the month that he had.

Chair Thielen asked what are Mr. Ing's clients going to do if the decision comes out on a Federal appeal and a contested case hearing that they owe the money, what are their plans? Mr. Ing said they can't pay it. He hasn't had the discussion with his clients, but he knows it will be extremely difficult for them. The Chair said but, their lawyer admitted on the record that the loggers cut the trees in this area and that is a violation of the law that there is a significant value of damages for the amount of wood taken. She asked is it inevitable that they are going to have to pay something? Mr. Ing acknowledged that it was determined by the Court of Appeals final judgment that the State owns the land. The Chair asked whether Mr. Ing was representing his clients in that Federal Appeal and Mr. Ing said they are in discussion on that right now. As of this day he is not. He had a question – let's say the judgment comes down in late 2009 or 2010 it was determined up to that date the State owns the property and they were there years ago where the State did not have clear title which is still an issue. Chair Thielen said that she used to work in private practice and she knows that going through a Federal Appeal will cost Mr. Ing's clients more than a \$100,000. Mr. Ing said as he indicated before he is going to do this on a pro-bono basis. The Chair asked for the Federal Appeal as well as a contested case hearing before the Board and an appeal for that? Mr. Ing stressed if they do the appeal and acknowledged that.

Chair Thielen asked whether Mr. Ing had an alternative recommendation. Mr. Ing said he wished he had a clear recommendation that he could make and apologized that he can't. He does think the statute was misapplied and he knows they will present evidence of the value of the lumber, as stated here, is excessive especially between the select and economy. The Chair said that Mr. Ing's preference is to mediate and asked whether Mr. Wynhoff had a response to that. Mr. Wynhoff said he doesn't have the authority to mediate that he represents the staff and the Board is the one to decide. We've gone through the process a few times and we understood that there are some difficulties in mediating or reaching something once there is a contested case or even before that and they won't get all the Board down here that he will be the ultimate decision maker. He would be thrilled to settle this as well, but it's not his place to settle it, it's the Board's. If the Board wants to set up some process to consider that is terrific, but there would need to be some representative that the Board knows because of issues with the Chair being involved in both the mediation and contested case hearing and suggested that one of the deputies could be involved. Mr. Wynhoff is all in favor of it.

Member Pacheco referred back to Mr. Ing's comment regarding the statute on the per day fine. Mr. Wynhoff said the statute says for violation of the rule the fine is \$100 per day and his interpretation means per violation per day. He doesn't know whether Mr. Ing is arguing if they went out and cut down a hundred trees on one day then it would be \$500, but if those were the facts not knowing how long the loggers were out there his interpretation is a hundred violations in one day therefore there would be a hundred fines.



On the per day, if they left a fence up there for 10 days maybe the fine could be \$500 per day. Mr. Wynhoff didn't think the statute as worded means or could reasonably be interpreted to mean if you committed a hundred violations in one day you are only entitled to a \$500 fine. Chair Thielen gave the analogy of illegal vending day after day where you can't say that is one violation that it is \$500 per day and Mr. Wynhoff agreed that is a common sense interpretation of the rule.

Member Morgan said he was accepting what Mr. Ing said that the loggers aren't capable of paying the \$550,000 and to come to a better understanding to what they can pay if the appeal doesn't go forward to how the loggers want it and asked what is that number? Chair Thielen said that we don't have any guarantee from Mr. Ing who is going to ask for a contested case hearing regardless of the number because he can't give the Board a number today and he is not prepared to on behalf of his clients. She is not inclined to give a reduction on some theoretical grounds that his clients may or may not agree to it, but Mr. Ing is going to go ahead and ask for a contested case hearing. There maybe a way of framing it to say here is a starting point direct the parties to discuss and maybe come back next month and either have a settlement offer on the table and save everybody -- their attorneys included.

There was some Board discussion regarding whether to vote on this action or table it for mediation and one Board member did not support tabling it. If there is Board passes something that is unattainable what is the next action and whether mediation is possible after passing the action noting that the loggers are destitute. One Board member didn't agree with the FOB at Kawaihae because those trees are gone or laying on the ground and that potential value is lost.

Chair Thielen said it's up to Member Pacheco who was the only member to vote against extending this the last time and she agrees it is disappointing to have the attorney walk in today and not be prepared to discuss this case on its merits and not have anything from his clients on what they are willing to do and admitting on the record that these trees were cut and if it is State land it is a violation. Even the clients don't know whether they've got representation to go through an appeal. People should have come today ready to talk and with that said the Chair suggested deferring action for one month and encourage the parties to mediate and come back next month with the clients here or some representative on what they are willing to do and the Board will look at the minimum starting quantity if we don't come back with any proposed response because she agrees with Member Pacheco that these are conservative numbers that the loggers could be subject to much higher fines and that is what the Board did the last go around in a contested case. The Chair recommends deferring for one month, but with a very strong message to go back to your clients that if they are not here there are some members of the Board who are inclined to look at these as base numbers and to increase them if they think there is justification for in the record and to come up with a decision which they are going to have to appeal and if they don't have a pro-bono lawyer doing it then it will be a collection action at that point.

Member Pacheco suggested taking the recommendation and after #1 add a new #2 and shift all numbers down and put in language that allows for that process and that month to try to come together a number that is acceptable. If not than #3, #4 and #5 would be in effect. Chair Thielen said to keep #1, #2, add a new #3 delegating to the Chair the authority to mediate a lesser amount of fine... that's hard. The loggers want an overall number. In the past, we found a violation, levied a fine amount, delegated to the Chair to mediate a payment amount and schedule and then come back for Board approval of that. Mr. Wynhoff noted the Molokini and Kai Kanani cases that he was in favor of the number, but it should not be the final number so Mr. Ing is not forced to ask for a contested case because when you get to a contested case mode there are issues raised on how involved the Chair can be and he stressed it would be a lot more difficult if they went to contested case mode which is something the Board should think about. The Chair suggested fining a violation and delegating authority to the Chair to attempt to mediate a dollar amount within the next month and either to come back with that dollar amount next month or the amount of the fine to be determined next month knowing that the parties have a right to seek a contested case hearing at that point on the amount of the fine. Even if the Board finds a violation the parties may be required to file a contested case hearing. Mr. Wynhoff reiterated the difficulties of a contested case because it raises the issue whether the Chair can participate in both the mediation and contested case which may be a major point of contention.

There were more discussions on whether to go ahead, to defer to mediate, Molokini, that if Mr. Ing is going to ask for a contested case he will.

Chair Thielen asked Mr. Ing that if the Board were to find a violation of the law, but then delegate authority to the Chair to attempt to negotiate an agreed upon fine amount is that something you are going to be obligated to file a contested case hearing on behalf of your clients or at least are they prepared to acknowledge there is a violation of the law. Mr. Ing said he couldn't respond to that today because he doesn't have the authority. Chair Thielen said then he will have to file a contested case request if they find a violation of the law. Mr. Ing said because if they went on appeal and if he didn't have a contested case proceeding in place then the ownership issue or not admitted a fine.

Chair Thielen summarized either way if the Board can make a statement in saying to go ahead there is enough delay and there is a violation then go to contested case then that means if there are discussions under those parameters or we say defer one month to provide more flexibility to the discussions. Although, Member Pacheco has a very good point that if Mr. Ing's clients aren't willing to come in and make even that concession she wouldn't know how fruitful discussions will be at this point. They don't even know whether they've got an attorney who is willing to represent them because he may be unpaid.

Member Goode asked after the contested case with a potential number different from today that would come back to the Board and the Chair confirmed that. Mr. Wynhoff related what happened in the Kai Kanani matter with the attorneys. Member Goode suggested coming up with a set of numbers today via contested case with additional

information, if there is a settlement through contested case then take it up, if there is no settlement then make a final.

Chair Thielen suggested deferring for a month to see if the parties can come back to the Board in good faith and if they don't she wants higher numbers that these are base numbers. She doesn't want to go with conservative estimate of damages. We have an admission today, they cut the trees on State land and violated the law and it doesn't matter whether there was intention or not and why drag through procedures that go on for years and years. We need to pressure them to come to the table and stop this delay and the strongest message the Board can send to the parties is you got 30 days of good solid discussions with our counsel on what are your clients are willing to do because it doesn't make sense to her that her clients are dickering over a \$100,000 difference in value and they want to have attorneys going through with expert witnesses, three days of contested case hearings, and a Federal Court of Appeals that is well over a \$100,000 of cost that this is not sounding right to her about this whole thing. If the parties haven't made any good faith work with them then they will have a hard talk about damages.

Member Pacheco said if a month has the possibility of sparing the Department the cost of going through a contested case hearing with great reservation he can support that as long as there are no further extensions.

Member Morgan made the motion to accept what Member Pacheco said and Member Agor seconded it. All approved the motion.

**The Board:**

**DEFERRED. The Land Board deferred this item for one month until the next Board meeting. Member Pacheco was adamant that no further extensions be given on this matter. Chair Thielen urged the Board to strongly consider higher fines if and when this matter is brought to the Board again, and not rely on or be constrained by conservative damage estimates.**

**Deferred. (Pacheco, Morgan)**

Chair Thielen left for another meeting and Member Agor stepped in as Chairperson

**Item C-1      Information Briefing on Permitting Process for Conservation  
Stewardship Permits for Kapapa Islet Wildlife Sanctuary, Oahu**

Mr. Conry said he wanted to recognize his staff from Oahu who have been working on this issue and were asked to come back and brief the Board on the process for setting up a conservation stewardship permitting process with the community. This was a rather contentious issue in passing the rules. He wanted to recognize the staff who could update the Board on last night's meeting with the community. Staff has taken the step to set up an advisory counsel and has had two meetings so far. The first meeting discussion is in

the submittal. Mr. Conry introduced Jason Misaki, Oahu Branch Biologist and Jap Eijzenga who is also working on this project.

Mr. Misaki reported after the first meeting they cleared up concerns users had over the passing of the new wildlife sanctuary rules. In this small forum this specific meeting was to discuss how to get the users access to Kapapa Islet and the users had concerns with the rule making process and how staff went about that. That meeting was to get a community group to allow staff to permit the users to access the island and when that was cleared up the users understood where staff was coming from and wanted to know where staff want to go with that group. At last nights meeting the group acknowledged staff's process and how they wanted to move forward and didn't comment too much about the process, recognizing that staff is there to work on getting a plan. They set three goals:

1. Create a management plan with specific uses from the users and staff to manage the island and sanctuary. Staff has knowledge to manage the biological resources in the area, but not for the recreational, cultural and other activities for the island and wanted the community's input on what they expect staff to do there and for themselves.
2. Create guidelines for the permitting process so when the permits come out they will understand what specifically the activities or actions proposed and what guidelines to permit and deny those specific activities.
3. Create the management plan to enable the community stewards to do specific restoration tasks, to get on the island and do activities that are consistent with staff's management of the island.

Mr. Eijzenga spoke saying that the tone of the discussion changed since the first meeting. The second meeting had a lot of cooperation where there was mutual acknowledgement of values placed on the resources and on the island which was a good step to move forward on the management plan that would find a middle ground with the users within the parameters based on the rules and the management guidelines for Forestry and Wildlife.

It was asked by a Board member whether all users groups were there and Mr. Eijzenga said that not everyone from all groups contributed to the discussion. Staff is working with the community to include everyone, but the user groups had a good representation.

Another Board member asked whether they will see a timetable where Mr. Misaki said they don't have one, but they all want to do this as soon as possible and will bring it to the Board. Mr. Eijzenga said that their branch manger, Dave Smith had given the guideline of about a year to produce a management document to present to the Board.

A Board member asked whether the users understand there is limited access and it was confirmed they do. This Board member was glad the tone has changed and asked whether things like camp fires were discussed where Mr. Eijzenga said they attempted to get people to lay down on the table what values they placed on the island, what they liked to see in the future in terms of protection and access. Some people are more focused on resource protection managing it as a sanctuary and some are focused on continuing

access on certain activities like fishing, camping, etc. Within the group there wasn't an agreement to the extent they would like to see access in the future, but this will be discussed along the way, because some want very limited access and some want open access.

Another Board member asked whether the meetings had a mediator where Mr. Eijzenga said that they mediated the meetings themselves explaining the criticism at the first meeting on the rules and they considered getting a facilitator, but last night's meeting worked well without one without staff getting in the way of the process.

One of the Board members asked how they are reaching out to inform the public. Mr. Misaki said that people with complaints came to staff and had those people bring in the various users groups that they wanted to keep this process as informal as possible to complete the management as quickly as they could and didn't do any kind of public announcements, but they felt they did inform enough of the community who had a vested interest in this. This Board member noted that there will always be people who'll come up very last minute saying I never heard about this and question what was done and he thinks you need to make the effort once or twice to get the word out using PSAs, radio, etc. Mr. Eijzenga said they were relying on word of mouth and they did find that there wasn't as much communication between members that they would like. At last night's meeting there was a complaint that the Kaneohe Bay Regional Council wasn't involved when two of their members were present and that member didn't realize that the president of that Council was present at the meeting. The Kaneohe and Kahalu'u Neighborhood Boards, the Regional Council and civic clubs were involved. There was an article submitted to Hawaii Fishing News. The Board said they would like staff to do some public information by advertising these meetings.

There was mention of a previous Board meeting testifier from the Atlapac fishing club who was at last night's meeting and his tone has changed dramatically in acknowledging the resources.

Mr. Conry noted that there is some long standing family responsibility in stewardship over the island and staff is trying to use that to help guide the process because this is just one islet in the entire chain, but they want to be sensitive to the community site and informed the Legislature this process is going forward. A Board member asked whether there was a difference between historical use and cultural use and that was acknowledged.

Another Board member asked when the next meeting is and the reply was April 21<sup>st</sup>. Mr. Conry thanked the Oahu Branch for their work because of this tough issue and bringing people in.

**Item C-2 Request for Approval of Expenditure of Funds and Authorization to Negotiate and Sign Contracts to Implement Six Landowner Incentive Program Projects: 1) RFP LIP 10-1 for Construction of Watershed Forest Protection Fencing at Kahikinui, Maui to the Tri-Isle Resource**

Conservation and Development Council, Inc.; 2) RFP LIP 10-2 for Koa Forest Restoration, Leeward Haleakala, Maui to the Tri-Isle Resource Conservation and Development Council, Inc.; 3) RFP LIP 10-3 for North Kona Fencing and Habitat Restoration to the Hawaiian Silversword Foundation, Inc.; 4) RFP LIP10-4 Lower Peahinaia Ecosystem Protection to 'Oahu'Ohu Ko'olau, Inc.; 5) RFP LIP 10-5 Wainiha Preserve Ungulate Management to the Nature Conservancy of Hawaii; 6) RFP LIP 10-6 for Restoration of Hawaiian Dry Forests to the Hawaiian Silversword Foundation, Inc.;

**Item C-3**      **Authorization of Funding for the Nature Conservancy for \$123, 531 during FY 11-16 for Kanepu'u Preserve Continued Enrollment in the Natural Area Partnership Program and Acceptance and Approval of the Kanepu'u Preserve Long Range Management Plan, TMK 4-9-02:01, Lanai**

Member Gon recused from Items C-2 and C-3.

**Unanimously approved as submitted (Pacheco, Edlao)**

**Item C-4**      **Amend Prior Board Action of August 14, 2009, Item H-1, Attachment C.1.1: "Camping Fees" for the Forest Reserve System**

**Item C-5**      **Request for Approval of a Memorandum of Agreement between Maui Land and Pineapple Company, Inc. and the State of Hawaii Department of Land and Natural Resources' Na Ala Hele Trails and Access Program for a Public Shoreline Access and Scenic Overlook at Mokuleia Bay, Honolulu, Maui, Hawaii and to Defend and Indemnify the Landowner Pursuant to HRS Section 198D-7.5**

**Unanimously approved as submitted (Pacheco, Gon)**

**Item C-7**      **Authorization for the Chair to Develop and Execute a Memorandum of Understanding with the Waianae Mountains Watershed Partnership**

**Unanimously approved as submitted (Pacheco, Edlao)**

**Item D-6**      **Consent to Extension of Lease Term, General Lease No. S-4475 K.K. Ranch, Inc., Lessee, Parcels 7-A and 7-B, Government Land of Kalopa and Ka'ohe 3, Hamakua, Hawaii, Tax Map Key: 3<sup>rd</sup>/4-4-14:02, 03 & 11.**

Mr. Atta asked to withdraw this item.

**Withdrawn (Gon, Edlao)**

**Item D-11      Removal of Unauthorized Encroachments on State Beach Reserve Land by Ms. Barbara Harrison at Waiohuli-Keokea Beach Homesteads, Kihei, Maui, Tax Map Key:(2) 3-9-009:011.**

Mr. Atta asked for an amendment per the Office of Attorney General's request. In staff's recommendation they originally requested the ability to file a lien on the property, but staff was advised by the Deputy AG that in order for a lien to attach staff would have to obtain charge rent so the recommended change is authorizing the Chairperson to allow taking any necessary action including initiating legal proceedings to place a lien on the property referring to recommendation #6.

**The Board:**

**APPROVED AS AMENDED.** The Land Board amended this item by modifying Recommendation No. 6, as follows:

**"In the event, Ms. Barbara Harrison fails to reimburse Land Division for its clean-up expenses or fails to pay the \$1,000 fine, and any additional \$1,000 per day fines, authorize [Land Division to file] the Chairperson to take any action, including initiating legal proceedings, necessary to place a lien on Ms. Barbara Harrison's property located at 1470 Halama Street or any other properties owned by Ms. Barbara Harrison."**

Otherwise, the Land Board approved staff's recommendations as submitted.

**Unanimously approved as amended (Edlao, Goode)**

**Item D-1      Amend Prior Board Action of October 28, 2005, Item D-2, Conveyance of State Land, Parcel 03 abutting Eastside of Poipu Road for Road Improvement Purposes to the County of Kauai, Koloa, Kauai, TMK: (4)2-6-04: 03.**

**Item D-2      Set Aside to Department of Transportation, Highways Division for Wailua Falls Loop Road, Wailua, Kawaihau, Kauai, Tax Map Key: (4) 4-2-1:portions of 5 and Kuamoo Road.**

**Item D-4      Issuance of Revocable Permit to John Chiquita, Jr., Waiakea, South Hilo, Hawaii, Tax Map Key: 3<sup>rd</sup>/2-2-50:78.**

**Item D-8      Issuance of Revocable Permit to Beach Games Spectacular, Inc. dba BGS Incentive Activities for Sand Sculpture Contest at Wailea Beach, Maui, Tax Map Key: (2) 2-1-23:seaward of 7.**

- Item D-9** Issuance of Revocable Permit to MC&A, Inc. for Team Building Games and Beach Activities at Wailea Beach, Maui, Tax Map Key:(2) 2-1-023: seaward of 007.
- Item D-10** Amend Prior Board Action of October 27, 2000, Item D-13, Grant of Term, Non-Exclusive Easement to Keith Scott Douglas and Bonnie May Douglas for Waterline Purposes, Makawao, Maui, TMK (2) 2-9-011:portion of 008.
- Item D-12** Issuance of Revocable Permit to Hawaii Explosives & Pyrotechnics, Inc. for Aerial Fireworks Display, Honolua, Lahaina, Maui, Tax Map Key:(2) 4-2-004: seaward of 015.
- Item D-13** Amend Prior Board Action of June 14, 2002, Agenda Item D-6, as Amended on July 26, 2002, Agenda Item D-4, Cancel Governor's Executive Order No. 3385 and Reset Aside to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, Together with the Mala Wharf Small Boat Launching Ramp Site, Adjacent Submerged Lands and Surface Waters, Alamihi and Moalii, Lahaina, Maui, TMK: (2) 4-5-04 and 4-5-05.
- Item D-16** Issuance of Revocable Permit to Hawaii Explosives and Pyrotechnics, Inc. for Aerial Fireworks Display at Duke Kahanamoku Beach, Waikiki, Honolulu, Oahu, Tax Map Key:(1) 2-3-037:021 portion.
- Item D-17** Amend Prior Board Action of October 26, 2007, (Agenda Item D-7), Cancellation of Easement "A" of Land Office Deed No. 28135 to Hawaiian Electric Company, Inc. and Grant of Perpetual, Non-Exclusive Easement to Hawaiian Electric Company, Inc. and Hawaiian Telcom, Inc. for Access and Utility Purposes, Waimanalo, Koolaupoko, Oahu, Tax Map Key:(1) 4-1-035:013 (Portion).
- Item D-18** Sale of Reclaimed Land to Gwenette Higa; Rescind Prior Board Action of August 12, 2005, Item D-15, Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-5-007:seaward of 023.
- Item D-19** Rescind Prior Board Action of August 28, 2009, (Agenda Item D-22), Sale of Remnant to Dana K. Lum Revocable Living Trust, Brenda M.H. Blake, Wanda L. Hanson and Lana L.L.K. Min: Kaneohe, Koolaupoko, Oahu, Tax Map Key:(1) 4-5-038:013.
- Item D-20** Amend Prior Board Action of October 9, 2009, Item D-11, Mutual Cancellation of General Lease No. 5382; Issuance of Direct Lease to Waianae District Comprehensive Health and Hospital Board, Incorporated for Health Care and Medical Facilities Purposes, Lualualei, Waianae, Oahu, Tax Map Key: (1) 8-6-1:3.



**Unanimously approved as submitted (Goode, Gon)**

- Item E-1      Permission to Enter Memorandum of Agreement between the Department of Land and Natural Resources and the Department of the Army, United States of America for Water System at Mauna Kea State Recreation Area, Hawaii**

Dan Quinn, State Parks Administrator reported that the Army is treating the water and asked to amend the tax map noting that a chart Exhibit A was distributed earlier and to follow DOBOR's permits.

A Board member asked whether there is a landing timeframe if they don't have the permits. Mr. Quinn's reply was there was no timeframe that it depends on the Army noting there is a limited number of cabins available on weekends. There is no water in the sinks and will have to trench a separate line.

**Unanimously approved as submitted (Pacheco, Gon)**

- Item E-2      Request Approval to Increase Commercial Kayak Landing Fees at Wailua River State Park on the Island of Kaua'i**

**Unanimously approved as submitted (Edlao, Gon)**

- Item F-1      Request for Approval to Add Federal Funding (\$330,000) and Extend through FY11 DLNR/University of Hawaii (UH) Contract No. 47471 for the Project Titled Hawaii Fish Aggregating Device (FAD) System**
- Item F-2      Request for Approval to Add Federal Funding (\$365,250) and Extend through FY11 DLNR/University of Hawaii (UH) Contract No. 55137 for the Project Titled Evaluating the Effectiveness of Restricted Fishing Areas for Improving the Bottomfish Fishery**
- Item F-3      Request for Approval to Add Federal Funding (\$52,000) and Extend through FY11 BLNR/RCUH Contract No. 52851 for the Division of Aquatic Resources' Ulua Tagging Project**
- Item F-4      Request for Approval to Add Funding (\$674,414: \$546,209 Federal Funds, \$128,205 Special Funds) and Extend through FY11 BLNR/RCUH Contract No. 48518 for the Division of Aquatic Resources' Hawaii Marine Recreational Fishing Survey Project**

**Item F-5      Request for Approval to Add Federal Funding (\$468,000) and Extend through FY11 BLNR/RCUH Contract No. 51059 for the Division of Aquatic Resources' Stream/Estuarine Fisheries Studies Project**

**Item F-6      Request for Approval to Add Federal Funding (\$350,000) and Extend through FY11 BLNR/RCUH Contract No. 58627 for the Division of Aquatic Resources' Maui/Oahu Marine Resources Assessment Project**

Mr. Polhemus described these funding contracts.

**Unanimously approved as submitted (Gon, Morgan)**

**Item J-1      Approval for Extension of Contract No. 58038 Buoy Maintenance and Repair Services for Ocean Waters, Island of Oahu**

**Item J-2      Cancellation of Revocable Permit No. B-05-06 to Kona Blue Water Farms, LLC, and Issuance of a Revocable Permit to Keahole Point Fish LLC, a Delaware Limited Liability Company, Located within Honokohau Small Boat Harbor, Kelakehe, Honokohau, North Kona, Hawaii, TMK: (3) 7-4-08:003 (por.)**

**Item J-3      Denial of Request for a Contested Case Hearings by Mark Meyer**

**Item J-5      Reissuance of a Revocable Permit to Hawaiian Island Paddlesport Association, a Domestic Non-Profit Corporation, Located within Honokohau Small Boat Harbor, Kealakehe, Honokohau, North Kona, Hawaii, TMK: (3) 7-4-08:003 (por.)**

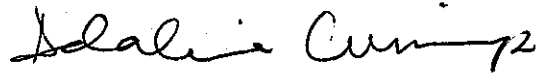
Mr. Yim reported no changes to these items except for Item J-5 where the

**Unanimously approved as submitted (Morgan, Edlao)**

**Adjourned (Gon, Pacheco)**

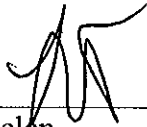
There being no further business, Chairperson Thielen adjourned the meeting at 1:40 p.m. Recordings of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Adaline Cummings  
Land Board Secretary

Approved for submittal:



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Laura Thielen  
Chairperson  
Department of Land and Natural Resources